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Zila Panchayat Vs State Public Services Tribunal and Others

Civil Miscellaneous Writ Petition No. 25752 of 1997

Court: Allahabad High Court

Date of Decision: Sept. 26, 2005

Acts Referred:
Constitution of India, 1950 â€" Article 311(2)#Uttar Pradesh Public Service Tribunal (Procedure) Rules, 1992 â€" Rule 15

Citation: (2006) 1 AWC 1048

Hon'ble Judges: Shishir Kumar, J; B.S. Chauhan, J

Bench: Division Bench

Advocate: N.S. Chaudhary and Sunil Rai, for the Appellant;

Judgement

B.S. Chauhan and Shishir Kumar, JJ.
The Zila Panchayat, Aligarh has questioned the validity of the judgment and order dated 02.05.1997

of the U.P. Public Services Tribunal, by which the claim petition of late Ved Prakash Saxena, who is represented through his heirs and legal

representatives, respondents No. 2 to 7, herein above, has been allowed on the ground that the enquiry against the delinquent employee stood

vitiated on account of non-production of oral witnesses. The Tribunal concluded that there was no evidence before the Inquiry Officer to come to

the conclusion that the charges were proved against the petitioner and, therefore, the enquiry was in violation of Article 311(2) of the Constitution

of India read with Rule 55 of C.C.A. Rules, 1930. Accordingly the Tribunal set aside the order of punishment and extended all benefits to the

respondents No. 2 to 7, who are the heirs and legal representatives of late Ved Prakash Saxena.

2. The facts and circumstances giving rise to this case are that late Ved Prakash Saxena was appointed as a Clerk Grade III in 1952 in Zila

Parishad, Aligarh and was ultimately promoted to the post of Licence/Tax Inspector on 11.6.1968.

3. Shri Saxena, while serving on the said post, was found to have committed some misconduct, for which he was served with a charge sheet

containing six charges in 1975. Three of the charges were in respect of temporary embezzlement relating to non-deposit of certain amount within

time after having collected it from the concerned person. The other charges related to (i) acceptance of illegal gratification (ii) non-verification of the

tour diary and claiming the allowances etc; (iii) that he had earlier committed the same misconduct and was punished. The delinquent submitted his

reply to the charge sheet.

4. An enquiry was conducted by the Inquiry Officer who submitted his report to the Chairman of the Zila Panchayat and the same was furnished to

the delinquent employee along with a show cause notice to submit his reply. A copy of the Inquiry Officer"s Report has been appended as

Annexure-11 to the counter affidavit. The charge sheet has been appended as Annexure-6 to the counter affidavit. A perusal of the charge sheet

indicates that there were six charges in all but the Inquiry Officer has commented upon only five of the charges. It is further to be significantly noted

that in respect of charge No. l, which was in respect of accepting a bribe of Rs. 140/-, for which the employee was being criminally prosecuted,

was not dealt with by the Inquiry Officer and he declined to submit any report in respect thereof in view of pendency of the criminal case. The

employee submitted his explanation to the said show cause notice and the Inquiry Officer"s report. Where after the Chairman, Zila Panchayat

passed the order of punishment dismissing Shri Ved Prakash Saxena from the service. The dismissal order became subject matter of challenge

before the Tribunal and during the pendency of the claim petition, Shri Saxena died and was substituted by his heirs and legal representatives, who

are the contesting respondents No. 2 to 7 herein.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. Six charges had been framed against the petitioner. Charge No. 1 related to acceptance of illegal gratification. The same has not been enquired

into by the Inquiry Officer, in view of the pendency of the criminal case, on the said charge against him. Charge No. 5 was only to the effect that

earlier, vide impugned order 17.6.1974, the said employee had been punished for not depositing the collected amount in time and considering it to

be a temporary embezzlement, punishment of withholding three annual grade increments without cumulative effect and depriving him from any

amount other than the subsistence allowance, paid to him during suspension and making an adverse entry in his Service Book, had been imposed.

The charge No. 6 which related to non-verification of the tour diary of the said employee was not dealt with by the Inquiry Officer at all.

7. Thus, it is evident from the aforesaid that the punishment has beer imposed only on the basis of charge Nos. 2, 3 and 4, with the aid of charge

No. 5. While recording the finding of fact, the Inquiry Officer held that it was not so serious. Thus, it appears that the punishment has been

imposed only o the basis of the findings on charge Nos. 2 and 3 with the aid of charge Nos. and 5. The said charge Nos. 2 and 3 related to

temporary embezzlement, as the amount collected by the said employee was not deposited within time and as the employee was found to have

committed a similar misconduct earlier also and the punishment of dismissal from service was imposed.

8. The Tribunal has decided the case in absence of the counsel of the respondent-employee, as the counsel did not appear, under Rule 15 of the

U.P. State Public Services Tribunal (Procedure) Rules, 1992, observing as under:-

From the facts mentioned above, it is clear that in this case inquiry has not been made according to rules. Admittedly, in this case no witnesses

were produced before the Inquiry Officer. The reason for the same given by the O.Ps. is that petitioner has not submitted any reply and therefore,

there was no need to produce oral witnesses. The inquiry was made for the charges of taking bribe by the petitioner. It is imposable to imagine that

all the charges were based on documentary evidence. Taking of bribe has nowhere been written in the documents or note. In this case, production

of oral witnesses was a must and this was not done. No enquiry can be completed on the basis of charge-sheet, reply or documents alone.

9. No other finding has been recorded by the Tribunal and the judgment is based only on the ground that no witnesses were examined in the

inquiry and the findings remain mainly shifted to the issue of acceptance of illegal gratification, which was not dealt with by the Inquiry Officer.

Petition has been allowed with all consequential benefits.

10. It is evident that the learned Tribunal has laboured unnecessarily dealing with an issue, which has not been dealt with by the Inquiry Officer or

the Disciplinary Authority, i.e. charge No. 1 relating to acceptance of illegal gratification. The Tribunal has erroneously recorded a finding that the

enquiry was made in respect of the charge of taking bribe by the employee, as is evident from a perusal of the Inquiry Officer''s report and also

indicated herein above, the issue was never enquired into either by the Inquiry Officer nor was it made the basis of dismissing the employee by the

Disciplinary Authority. Thus, the finding of the Tribunal is founded both on erroneous assumption of fact as well as of law. When the Inquiry

Officer did not find it fit to proceed with the charge of taking bribe, there was no occasion for him to have summoned any witnesses for oral

examination. The finding of the Tribunal, therefore, reflects complete non-application of mind. As found herein above, the Tribunal proceeded to

deliver its verdict on an issue, which was a total non-issue in the disciplinary proceedings and failed to address itself to the findings of the Inquiry

Officer, as accepted by the Disciplinary Authority in respect of other charges.

11. In such a fact-situation the matter requires to be re-examined by this Court, as the judgment of the Tribunal is not based on the controversy

involved in the case at all. Charge Nos. 2 and 3 related to the temporary embezzlement and considering the past conduct of the employee, wherein

he has earlier been found guilty of the similar charges and punishment had been imposed of dismissal from service, cannot be held to be

disproportionate to the delinquency.

12. The only issue required to be considered by us is, as to whether the employee had been given a fair opportunity to defend himself, as it has

been submitted by Shri R.K. Jain, learned Senior Counsel for the respondent that in spite of several representations/applications made by the

employee, the copies of the documents which had been relied upon by the Inquiry Officer/Disciplinary Authority, had not been supplied to him.

Therefore, he had no opportunity to prepare his defence and the inquiry proceedings stood vitiated.

13. The Disciplinary Authority in its order has recorded the finding of fact that the said employee was given opportunity to examine all the records

and he was given full opportunity to defend himself and was given a personal hearing also.

14. Be that as it may, the employee while submitting his reply dated 14.11.1976 (Annexure CA-12) to the inquiry report, admitted the misconduct

as under:-

He could not deposit the amount in time for paucity of time but there was no intention to withhold the same. In the year 1974-75, the same kind of

misconduct had been committed by another employee and the office did not proceed against him, therefore, no action should be taken against

him.

15. When the petitioner himself has admitted the misconduct, the submissions made by Shri Jain become totally irrelevant. As admission is the best

piece of evidence that an opposite party can rely upon and though not conclusive, is decisive of the matter, unless successfully withdrawn or

proved erroneous. (Vide Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others, Basant Singh Vs. Janki Singh and

Others, ; Prem Ex-servicemen Co-op. Tenant Farming Society Ltd. and Others Vs. State of Haryana and Others, ; General Court Martial and

Others Vs. Col. Aniltej Singh Dhaliwal, and Ram Bharose Sharma Vs. Mahant Ram Swaroop and Others, . Even if admission by a party is not

conclusive proof of the matter admitted, it may in certain circumstances operate as an estoppel. (Vide K.S. Srinivasan Vs. Union of India (UOI),

16. While considering a similar case in Nagubai Ammal and Others Vs. B. Shama Rao and Others, , the Apex Court held that admission made by

a party is admissible and best evidence unless it is proved that it had been made under a mistaken belief. While deciding the said case reliance has

been placed upon the judgment in Slatterie v. Pooley, (1840)) 6 M & W 664, wherein it has been observed as under:-

What a party himself admits to be true, may reasonably be presumed to be so.

17. In view of the above, as the employee himself has admitted the misconduct, the submissions advanced in this respect are not worth acceptance

and as the learned Tribunal has not addressed himself to the real controversy, the said judgment cannot be sustained in the eyes of law.

18. In view thereof, the judgment and order dated 2.5.1997 of the learned Tribunal is set aside and the order dated 2.5.1977 of the Disciplinary

Authority is restored. There shall be no order as to costs.